

1 IN THE UNITED STATES DISTRICT COURT.

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 BIODELIVERY SCIENCES : CIVIL ACTION
5 INTERNATIONAL, INC. And :
6 ARIUS TWO, INC., :

7 Plaintiff/Counterclaim :
8 Defendants :

9 vs. :

10 ALVOGEN PB RESEARCH & :
11 DEVELOPMENT LLC, ALVOGEN :
12 MALTA OPERATIONS LTD., :
ALVOGEN PINE BROOK LLC, :
ALVOGEN, INC., and ALVOGEN :
GROUP, INC., :

: NO. 18-1395-CFC-CJB

13 Defendants

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15 Wilmington, Delaware
16 Friday, February 26, 2021
17 2:00 o'clock, p.m.
Telephone conference

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19 BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C. JUDGE

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24 Valerie J. Gunning
25 Official Court Reporter

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APPEARANCES:

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JENNIFER WARD, ESQ.

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Alvogen Malta Operations Ltd., Alvogen Pine
Brook LLC, Alvogen, Inc., and Alvogen.
Group, Inc.

P R O C E E D I N G S

(REPORTER'S NOTE: The following telephone conference was held in Chambers beginning at 2:00 p.m.)

THE COURT: All right. Good afternoon. Let's have a role call real quick. Nicole, you're the on line, right, I believe?

DEPUTY CLERK: Yes, Judge, I'm here.

THE COURT: Okay. All right. So let's start with the plaintiff.

MR. TIGAN: Your Honor, Jeremy Tigan here as well as the same team as last time. I have Ms. Ward from my office as well as Mr. Levine, Ms. Swan and Mr. Hasford.

THE COURT: Great. Thank you. And then from the defendant?

MR. GATTUSO: Good afternoon, Your Honor. It's Dominick Gattuso from Heyman Enerio Gattuso & Hirzel. I also have with me on the line Steven Sklar and Gregory Bays from Leydig Voit behalf of Alvogen.

THE COURT: Okay. Great. Thanks.

So I got the stipulation and I signed it. And then so the reason why I'm calling is I didn't want to sandbag you Monday morning, but it seems to me we should be

1 reducing the amount of time allocated for trial and some
2 invalidity arguments, so I wanted to discuss that with you
3 all. I was thinking maybe you need nine hours at this point
4 each. I will hear from you.

5 MR. LEVINE: Your Honor, this is Mr. Levine from
6 plaintiff, BDSI. We had essentially, I think, based on the
7 fact that all the defenses were essentially the same from
8 the Chemo and Alvogen defendants, so I think from
9 plaintiffs' perspective, it was not like Chemo was raising
10 separate -- certainly at the pretrial conference, Chemo had
11 given up its defenses and essentially would be bound by what
12 Alvogen did anyway, which is why we let them out of the
13 case.

14 I think from plaintiffs' perspective, it really
15 doesn't change anything in terms of time allocation in terms
16 of the defenses raised and in terms of the narrowed
17 infringement case. That is plaintiffs' position.

18 THE COURT: All right. Mr. Sklar, somebody from
19 the defense?

20 MR. SKLAR: Yes, sorry, Your Honor. I was
21 waiting for --

22 THE COURT: That's all right.

23 MR. SKLAR: This is Steve Sklar for the Alvogen
24 defendants.

25 We agree with plaintiff, that this doesn't

1 change anything with the time from our perspective. Chemo
2 was along for the ride at least as of this time. The
3 pretrial conference here. We developed a -- our efforts
4 here with the 11 hours in mind and it doesn't change
5 anything from our perspective.

6 THE COURT: Well, it does change it from my
7 perspective when I set it, so I'm going to reduce it.

8 MR. SKLAR: Your Honor, this is Steve Sklar.
9 Can I add something as you're considering the issue?

10 THE COURT: Yes.

11 MR. SKLAR: Chemo had one of their own experts,
12 and I will say we were looking at half-hour tops for him on
13 the direct side and this is at the time of the pretrial
14 conference and we hadn't -- they had taken a back seat. So
15 their one minor part of the case was not very much,
16 half-hour on the direct side at tops. So I guess I just
17 want to make that point to the Court.

18 THE COURT: Okay. Well, then I'm going to
19 reduce it to ten-and-a-half hours a side, and I just can't
20 stress enough, two things. One is, my colleagues tell me I
21 give too much time for ANDA cases, and, number two, every
22 case I've had so far could have been tried in a lot less
23 time without exception, not even close. So I'm tempted to
24 go below, but right now I will just say you get
25 ten-and-a-half hours each. All right? And --

1 MR. SKLAR: Thank you, Your Honor.

2 THE COURT: That's not meant to be kind of let
3 me try to fill ten-and-a-half hours. I think you can do it
4 in less.

5 Mr. Levine?

6 MR. LEVINE: Nothing from us, Your Honor.

7 THE COURT: Okay. All right. Anything else I
8 need to address before -- if anything cropped up? I thought
9 you had a discovery dispute. You seemed to resolve it
10 yourself, which is good.

11 MR. LEVINE: Nothing from the plaintiffs, Your
12 Honor.

13 THE COURT: Mr. Sklar?

14 MR. SKLAR: This is Mr. Sklar. Nothing for the
15 Alvogen defendants, Your Honor. We look forward to Monday.

16 THE COURT: Yes. Well, I am, too. I have
17 signed the pretrial order. I just don't know how we're
18 going to do lunch and breaks yet. I'm sorry about that, but
19 because of this remote thing, it's just, and trying to get
20 through the trial to make sure we do it.

21 You know, I already told you we could go long in
22 the day, but if anybody needs to take a break at any point,
23 you know, just ask, and then my goal would be never to go
24 longer than two straight hours so I can give a break to my
25 court reporter. Okay?

1 Well, everybody have a good weekend. I look
2 forward to seeing you Monday morning. Thanks very much.
3 Bye-bye.

4 (Counsel respond, "Thank you, Your Honor.")

5 (Telephone conference concluded at 2:07 p.m.)

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